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**COMMONWEALTH OF VIRGINIA, ex rel.**

**TERRY L. STROCK, et al.**

**v.**

**CASE NO. PUE-2001-00716**

**B & J ENTERPRISES, L.C.**

**HEARING EXAMINER'S RULING**

**June 18, 2002**

On June 10, 2002, Joan G. Moore filed a Motion to Require B & J to Provide Full Responses to Interrogatories and Requests for Production of Documents by Joan G. Moore (First Set) (Motion to Compel") requesting that B & J Enterprises, L.C. ("Company") be directed to provide full answers to Questions 1(f), 2(b), 2(d) and 2(e) of interrogatories dated May 21, 2002. In support of her Motion to Compel, Ms. Moore makes the following points:

1. The questions asked are relevant to the determination of a full and correct accounting for the sewer utility component of the Company, or may reasonably lead to the discovery of admissible evidence;
2. The Company has based its request for a rate increase on the year 2000. Accounting for the year 2001 may also be considered in resolving this rate case;
3. In July of 2000, the Company was a combined sewer and development company;
4. In its previous case (Case No. PUE-1999-00616), the Company tried to re-label sewer connection fees as development fees and use the proceeds for non-sewer purposes;
5. In its previous case, the Commission Staff reduced the Company's utility plant from \$620,800 (as claimed by the Company) to \$482,840; and
6. The Company included a copy of its income tax return for 1998 as a part of its application for a Certificate of Public Convenience and Necessity.

On June 13, 2002, the Company filed a Response to Motion to Compel ("Response") stating that the information requested does not pertain to the sewer operation of the Company. The Company further explains that initially it operated as a development company and a golf course enterprise in addition to being a sewer company. As a result of the prior proceeding (Case No. PUE-1999-00616) before the Commission,

the Company became a public utility operating solely as a sewer company. The non-utility functions were transferred to the Ellett Valley Development Company, LLC ("Ellett Valley"). This functional separation occurred in 2001 and the 2000 tax return was based on accounting information from the combined companies.

The Company argues that information requested by Ms. Moore would be misleading because it involves the combined companies. Further, the Company states that the relevant information is available in filings made by the Company with the Commission. In summary, the Company asserts that the requests for information are irrelevant to these proceedings, not readily available and costly to provide. Providing this requested information would, according to the Company, inflate the Company's regulatory expense and is unnecessary. The Company requests that the Motion to Compel be denied.

The specific requests for information objected to by the Company pertain to Question 1(f) and documents requested in Questions 2(b), 2(d) and 2(e) of Ms. Moore's first set of interrogatories and requests for production of documents dated May 21, 2002.

Rule 5 VAC 5-20-260 of the Commission's Rules of Practice and Procedure pertaining to discovery is broad. In essence, the rule provides that information requested need not be admissible into evidence, but that it only appear reasonably calculated to lead to the discovery of admissible evidence. I find that Questions 1(f), 2(b) and 2(d) meet this test and are valid requests for information pertinent to this proceeding. The Motion to Compel is granted in regard to Questions 1(f), 2(b) and 2(d).

Question 2(e), however, is a request for information pertaining to Ellett Valley which is not a part of this proceeding. Ellett Valley is a separate company that engages in non-utility development. The records pertaining to the combined companies have been provided or are available. Accordingly,

**IT IS DIRECTED** that the Company provide information in response to Questions 1(f), 2(b) and 2(d). The information requested in Question 2(e) is not pertinent to this proceeding nor is it likely to lead to evidence admissible in this proceeding. Therefore, the Motion to Compel is denied in regard to Question 2(e).

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Howard P. Anderson, Jr.  
Hearing Examiner